

Date of decision: 06/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JYOTI PRIMARY SCHOOL

vs

ROSEMARY J MEKWAN

Appearance:

MR JV MEHTA	for Petitioners
MR SV RAJU	for Respondent No. 1
MR DS NANAVATI	for Respondent No. 2

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT

Rule. Mr.V.B.Raju appears and waives service of rule on behalf of respondent no.1. Mr.D.S.Nanavati appears and waives service of rule on behalf of respondent no.2. In the facts and circumstances of the case, this petition is taken up to day for final hearing.

2. This petition is filed by the petitioner for quashing and setting aside the order dt. September 28, 1995 passed by the Gujarat Primary Education Tribunal, Ahmedabad, in Application No. 20 of 1992 at Annexure.G by which right of the petitioner to cross

examine the original applicant (respondent no.1) is closed.

3. It is the case of the petitioner that respondent no.1 filed an application No.20/92 before the Primary Education Tribunal on September 20, 1995. The petitioner submitted an application for an adjournment as according to the petitioner date on which application was adjourned was September 21, 1995 and not September 20, 1995. On September 21, 1995, according to the petitioner he was sick and hence an application was submitted through his advocate for time. The Tribunal, however, closed the right of cross examination of the applicant and an order was passed to that effect. On September 28, 1995, a request was made by the petitioner to the Tribunal to reopen the right of cross examination and the Tribunal passed an order by granting conditional prayer that the petitioner will pay an amount of Rs.200/- towards the costs to the original applicant. That order was passed on March 31, 1995. It is the case of the first respondent that the said amount was not paid to him. On 9th May 1995, once again when the matter came up for hearing an adjournment was sought and the Tribunal was pleased to pass an order directing the petitioner to pay an amount of Rs.300/towards the costs to the original applicant. But according to the original applicant-first respondent even that amount was not paid. Now, in the petition, it was stated by the petitioner that on 9th May 1995, when the amount was to be paid to the petitioner neither the petitioner nor his advocate was present. On July 26, 1995 also neither the applicant nor his advocate was present in the Tribunal. The learned counsel for the first respondent stated that there was negligence and deliberate default on the part of the petitioner in not paying the amount of the costs and hence the Tribunal was constrained to pass an order by which right to cross examine the applicant was closed and the said order cannot be said to be contrary to law.

4. In the facts and circumstances of the case particularly in view of the fact that though the matter is very old, it appears to have been taken for hearing only in December 1994; that the Tribunal ought not to have closed the right of cross examination by the petitioner of the applicant. It is true that the petitioner has not paid amount of Rs.500/- towards the costs (Rs.200+ Rs.300/-). The learned counsel for the petitioner also made a statement at the bar that the petitioner is ready to pay the said amount.

5. It appears that when the notice was issued by this court conditional order was passed, which reads as under:

" Notice returnable on January 15, 1996 on condition that the petitioners deposit an amount of Rs.2000/- (Rupees Two thousand only) towards the cost of respondent No.1, initially. Such amount will be deposited on or before December 16, 1995. The office will issue notice only after

the aforesaid amount is deposited by the petitioners.
Further proceedings before the Primary Education Tribunal
are stayed meanwhile. Direct service is permitted.

4.12.1995. "

The learned counsel for the petitioner states that an amount of Rs.2000/- has already been deposited. In the facts and circumstances of the case, in my opinion, ends of justice would be met if the first respondent is paid the said amount. Hence, office is directed to pay the amount of Rs.2000/- which is ordered to be deposited and is already deposited by the petitioner, to the first respondent by a crossed cheque. The order of the Tribunal is hereby quashed and set aside. The Tribunal will allow the petitioner to cross examine the first respondent-applicant after February 19, 1996 as per the convenience and schedule of the Tribunal.

Rule is accordingly made absolute with no order as to costs.
